

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION**

T.K. CONSTRUCTION LLC U.S.,

5:15-cv-00475-BR

Plaintiff,

vs.

**CONSENT ORDER STAYING ACTION
PENDING ARBITRATION**

TRIANGLE CONSTRUCTION
COMPANY, INC. and
AVR DAVIS RALEIGH LLC,

Defendants.

This matter comes before the Court on the Joint Motion of the parties to this action, T. K. Construction LLC U.S. (“T. K. Construction”), Triangle Construction Company, Inc. (“Triangle”) and AVR Davis Raleigh LLC (“AVR”), for an Order staying this action pending arbitration.

This matter relates to the development of real property consisting of approximately three apartment buildings known as the Jones Grant Apartments located at 1040 Wake Towne Drive, Raleigh, North Carolina; 1000 Wake Towne Drive, Raleigh, North Carolina; and 920 Wake Towne Drive, Raleigh, North Carolina (“Project”). T. K. Construction was the drywall and paint subcontractor for a portion of the Project. The parties now desire to arbitrate all claims between T. K. Construction and Defendants.

NOW, THEREFORE, because it appears to the Court that all remaining parties to this action have agreed to resolve certain disputes between them in this case through arbitration, all proceedings in this action involving all causes of action are stayed pending arbitration, subject to the following terms and conditions, which are agreed upon by all remaining parties, and are hereby made a part of this Order:

1. **Selection of Arbitrator** – The parties have agreed to use a single arbitrator to be mutually agreed upon. The parties shall act in good faith and use their best efforts to select a single arbitrator. If the parties are unable to reach a consent as to the single arbitrator within 21 days of this Order, then it is agreed that the parties shall use a panel of three arbitrators. In such event, each party shall select an arbitrator and the third arbitrator shall be selected by the two arbitrators selected by the parties.

2. **Location of Arbitration** – The arbitration will be conducted in Raleigh, North Carolina at such facility as may be mutually agreed upon, or at any other location that is mutually agreeable. If the parties cannot agree on a facility for the arbitration, the arbitrator shall select the location.

3. **Date of Arbitration** – The arbitrator shall determine the date of the arbitration after consulting the parties regarding the amount of discovery and preparation needed prior to arbitration. In so doing, the arbitrator shall reasonably attempt to accommodate the needs of all parties and their counsel.

4. **Fees and Expenses of Arbitrator** – All fees and expenses incurred and charged by the arbitrator and (if necessary) for the facility shall be borne equally by T. K. Construction and Triangle. The arbitrator may assess in whole, or in part, his fees and expenses incurred in connection with the arbitration, as a part of his award, if allowed by contract or by statute.

5. **Issues** – All issues raised by the pleadings in this action, or which may be raised later, shall be submitted to the arbitrator for resolution. The scope of this arbitration shall be construed as broadly as possible so as to encompass all issues.

6. **Resolution of Disputes** – The arbitrator is expressly empowered to resolve all disputes in this action. The rules and decisional law of the State of North Carolina shall govern any dispute.

7. **Issuance of Award** – The arbitrator shall, if at all possible, issue his award in this case within thirty (30) business days of the conclusion of the arbitration. The arbitrator shall provide a statement of the reason for his award citing his findings of fact and conclusions of law.

8. **Final Award** – The final award of the arbitration shall be entered as a judgment in this action.

9. **Applicable Law** – This Agreement shall in all respects be governed and construed in accordance with the laws of the State of North Carolina.

10. **Successors and Assigns** – This Order shall be binding upon and inure to the benefit of the remaining parties and their respective heirs, executors, administrators, successors and assigns.

IT IS SO ORDERED.

This the 5 day of January, 2017.



Senior Judge, United States District Court

WE SO MOVE AND CONSENT:

/s/ John B. Walker

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Dated: 12/20/16